

28 March 2019

Russell Bell
randlbell@outlook.com

REF: OIA-4702

Dear Russell

Thank you for your email of 14 February 2019 requesting the following information:

Having regard to the provisions of Clause 37 (1) of the Health and Safety at work Act 2015 did the Agency undertake a risk assessment of the consequences of it making such a decision allowing e-scooters of electronic scooters on footpaths throughout New Zealand and if so, are you prepared to release that document for public critique

If on the other hand, on legal advice, you believe that you do not have a responsibility under the HSE Act, I would appreciate if you could forward me a copy of that legal opinion

Your request has been considered under the provisions of the Official Information Act 1982 (the Act).

The NZ Transport Agency did not prepare a risk assessment under the Health and Safety at Work Act 2015 (HSAW Act) prior to issuing the notice on e-scooters on the *New Zealand Gazette*. The HSAW Act refers to the responsibilities and duties of various persons and organisations. Primary duties are placed on persons conducting a business or undertaking (PCBUs), as defined in section 17 of the HSAW Act, as they have direct control over potentially hazardous activities.

The Transport Agency is not, in relation to activities conducted by other parties, a PCBU. It does have PCBU responsibilities for activities involving its own employees and contracted staff (such as driving work vehicles). It does not have authority to control the behaviour of e-scooter users. Further it is the Transport Agency's understanding that in its normal use a road is not a workplace, but rather a public place available to all citizens for travel.

In coming to this conclusion, we are not relying on any formal legal opinion, but have discussed this view with staff in our legal services unit.

To provide context to your request, the use of low-powered e-scooters (and other low-powered devices) has been permitted in New Zealand since 2005, when the *Land Transport (Road User) Rule 2004* (the Rule) was amended. This change determined where and how 'wheeled recreational devices' (WRDs), such as e-scooters, could be used.

A notice in the *New Zealand Gazette* on 18 September 2018 sought to provide clarity as to the requirements for the legal operation of e-scooters as WRDs, including their ability to operate without the need for registration and licensing. The *Gazette* notice does not change the regulations governing the use of e-scooters, rather it clarifies their interpretation.

The substantive decision-making and associated research regarding the use of e-scooters occurred in 2004 when the Rule was amended. No further substantive research, or risk assessment, was carried out in respect of e-scooters prior to the *Gazette* notice being issued. A document, setting out the background and regulation of e-scooters, and recommending the making of the *Gazette* notice was prepared in September 2018. A copy of that document is attached as Appendix A.

The second part of your request seeks a copy of the legal opinion. As stated above there is no formal opinion, and we have already included the view of the Transport Agency's legal services team.

Under section 28 of the Act, you have the right to ask the Ombudsman to review my decision to refuse parts of your request. The contact details for the Ombudsman can be located at www.ombudsman.parliament.nz.

If you would like to discuss this reply with the Transport Agency, please contact Chelsea Wehipeihana, Senior Customer Access Representative, by email to chelsea.wehipeihana@nzta.govt.nz or by phone on 0800 108 809.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Michael Aitken', with a stylized flourish at the end.

Michael Aitken

Senior Manager Operational Policy, Planning & Intelligence